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Protecting Innovation

Mark Chandler | December 5, 2014 at 7:30 am PST
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In the thirteen years I've been General Counsel of Cisco, I can count on one hand the number of times we've initiated suit against a competitor, supplier or customer.

It's therefore only after thoughtful and serious consideration that we are today filing two lawsuits to stop Arista's repeated and pervasive copying of key inventions in Cisco products. These suits cover key Cisco proprietary patented features and Cisco's copyrighted materials.

(The patent lawsuit can be viewed here. The copyright lawsuit can be viewed here.)

Cisco's $6 billion annual R&D expense, supported by over 25,000 engineers, has a proven track record of bringing innovation to our customers and partners around the world. Our success is built on using our innovation engine to lead in the marketplace. Our action today is based on the principle that to compete in technology, you need to innovate, not copy.

We have taken this action only after assuring ourselves of four key facts – all of which form the basis for legitimate intellectual property actions between competitors:

- Arista incorporates features knowing that Cisco holds intellectual property rights related to those features, all of which are Cisco proprietary and none of which are industry standards
- Arista intentionally markets those features to its customers as a basis for buying the products
- Arista promotes its copying to convince investors to finance the company
- Arista's actions, if unstopped, will embolden others to seek to do the same

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Intentional Copying

Arista's copying was a strategy, not an accident, and this is illustrated by the action we brought today regarding copyrighted materials. Entire sections of our copyrighted user manuals, complete with grammatical errors, are included in Arista's documentation. In addition, Arista lifted over 500 of our *multi-word* command line expressions identically and directly from our "IOS" into Arista's "EOS", comprising almost half of their entire command line interface. While simple, single-word commands ("Copy", "Paste", "Delete", for example) may not be protectable under copyright, unique multi-word commands like "aaa group server radius", "dot1x max-reauth-req" and "clear ip igmp group" are not self-evident. Making clear that the copying isn't required for any technical reason, Arista even provides

its customers with an alternative, Linux-based CLI, not built around Cisco commands. Arista says only 20% of its customers use the Linux-CLI because the vast majority of its customers like Cisco's CLI better. Lifting a large section of our unique command line expressions in these circumstances cannot be allowed to stand under any reasonable interpretation of the law.

For those who might think a CLI reflects some kind of standard that simply must be used by every industry participant for products to work together, let me offer a direct point of contrast: Arista has copied more than 500 Cisco multi-word command expressions, while networking products from HP, Brocade, Alcatel-Lucent, Juniper Networks and Extreme each have only a small fraction of overlapping CLI commands. In the case of Juniper Junos, the overlap is less than 30 multi-word commands. These formidable competitors have innovated on their own, rather than copy, to create value and interoperability for their customers.

Promotion of Theft

Particularly troubling is that Arista promotes the theft of Cisco's intellectual property as a key differentiator for Arista versus other Cisco competitors. Arista considers their executives' prior work with Cisco and the ability to copy Cisco intellectual property to be a key selling point for their products and for the stock of their company:

> "Since I helped build the enterprise [at Cisco], I would never compete with Cisco directly in the enterprise in a conventional way. It makes no sense. *It would take me 15 years and 15,000 engineers*, and that's not a recipe for success." –Arista CEO (former Cisco executive) (emphasis added); Adam Lashinsky, *An ex-Cisco exec reflects*, Fortune (Mar. 20, 2014), http://fortune.com/2014/03/20/an-ex-cisco-exec-reflects/

> "[A] Cisco CCIE expert would be able to use Arista right away, because we have a *similar command-line interface and operational look and feel*. Where *we don't have to invent*, we don't." –Arista CEO (emphasis added); John Gallant, *How Arista Networks got out in front of the SDN craze*, Network World (Feb. 22, 2013), http://www.arista.com/assets/data /pdf/Network_World_Arista_SDN.pdf

> Arista has learned to "*[p]rovide familiar interfaces to ease adoption*" including a "standard *CLI that … retains familiar management commands*" so much so that "80% [of Arista customers] tell us they appreciate the way they can *leverage their deep [Cisco] IOS experience*…- Arista CTO (former Cisco executive) (emphasis added); Kenneth Duda, *Linux as a Switch Operating System: Five Lessons Learned,* Arista EOS Central (Nov. 5, 2013), https://eos.arista.com/linux-as-a-switch-operating-system-five-lessons-learned/

> "Familiar management interfaces, standard CLI … It's been very *helpful for our customers to be able to rapidly adopt our products* and integrate them into their environments … that our *switches provide a familiar management interface* so their existing tools and processes, screen scraping, automation, *continue to work just as they did before.*" …- Arista CTO (emphasis added); Kenneth Duda and Lorenz Redlefsen, *EOS Bits & Bytes – Episode 1 "Lessons Learned While Building a Network OS on Top of Linux"*, Arista EOS Central at 7:15-8 min. (Jan 30, 2014), https://eos.arista.com/video-library/

> "The secret-sauce of Arista's EOS is a multi-process state-sharing architecture. EOS defines its state using central database (Sysdb) that holds and validates all system state and propagates updates to the agents. . ." Arista CEO; Jayshree Ullal, *How Robust is your cloud network?* Arista Blogs, Jayshree Ullal (Mar. 2, 2009), http://www.arista.com/blogs/?p=41

By the way, that particular 'secret sauce' is in fact not so secret– Arista's implementation is directly disclosed in Cisco Patent 7,162,537, invented by a Cisco engineer at a time when Arista's CEO was responsible for managing the development of switching products at Cisco and well aware of Cisco's development efforts.

Employee Mobility and Intellectual Property Rights: Keys to Innovation

Cisco has always welcomed competition. We are strong supporters of California's law that renders unenforceable any effort by a company to hold its employees to non-compete agreements, except in very limited cases; in fact, we apply that principle nation-wide. Dozens of Cisco competitors, many founded by former Cisco employees, have sprung up through the years, and we've never viewed that by itself as a cause for litigation.

We also aren't suing Arista in some distant jurisdiction over obscure patents covering features we don't currently use. Instead, today we're bringing our actions right here in the Federal District Court for the Northern District of California, where Arista is also located, over patents that cover Cisco's proprietary implementation of key features in products we are shipping today.

News in recent years has focused on abuses of the patent system – against which we continue to fight hard – by those whose business model consists of buying weak patents, stretching the interpretation as far as possible, resisting reexamination of those patents and leveraging litigation uncertainty to extract settlements. Our action today speaks instead to why our patent system exists. Our goal is to stop infringement by a competitor of features that are in products that we are shipping today.

Cisco is Committed to Open Standards

We support open standardization and, in fact, strongly support the view that licenses to standard-essential patents should be readily available on transparent and predictable terms with strict limits on availability of injunctions. We support standardization because that's what allows networks around the world to interoperate regardless of whose technology is being used. The Internet has grown as it has because it allows for any company to create products based upon open standards.

Importantly, however, the patented and copyrighted Cisco features and implementations being used by Arista are not industry standards. In some cases, the engineers who were the named inventors on the patents now work at Arista; in other cases, they were developed by Cisco engineers who were supervised by former Cisco employees, who are now Arista executives. These features enable us to bring architectures to market that can work faster, more reliably, more securely and with less cost than those of our competitors. Our implementation of these features is how we add value for our customers, and differentiate our products. They represent Cisco's unique value proposition, distancing us from purveyors of commoditized or "white box" networking products, and also from competitors who have implemented similar features, but not as well. They reflect the money and time we've invested along with the risk we've assumed to attribute the resulting innovation to its creator: Cisco.

Protecting Innovation

We have to make sure that our customers, employees and investors benefit directly from the $6 billion per year that we spend on research and development – providing gainful employment not just for those "15,000 engineers" whose work Arista felt they needed to copy, but also for the hundreds of thousands of other employees and those in our partner community who help develop, build and sell our products.

Just as we're proud when our products win in the marketplace, we're also proud of the innovation of our engineers. We are asking for official action to stop Arista's brazen misappropriation of the fruits of our

engineers' labor, and we will take whatever further steps are needed to block Arista from that misappropriation. We will stand behind and defend our innovations.

Tags: innovation, intellectual property, litigation

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